# MUSLIM PERSONAL LAW
## MORAL AND LEGAL ISSUES

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*In the Name of Allah, the Compassionate, the Merciful!*

# FOREWORD

On the one hand, the opponents of Islam and those inimical to it raise all sorts of objections on the Islamic ordinances and laws pertaining to the family life and declare them to be unnatural, inhuman and the legacy of a dark period, and on the other hand, the believers in Islam too do not act upon them and their lives not only are bereft of them but they do not even hesitate to act against them.

Last year, the Jamat-e-Islami Hind had taken up a two-week campaign from April 23 to May 7, 2017, with the objective of presenting the correct Islamic teachings about the family life and also creating awareness in the Muslim Community about them. During this campaign, thousands of large and small gatherings, corner meetings, sermons in the Jum`a prayers, special gatherings for women, and other programs were held, in which the Muslim Community took part in large numbers with fervour and enthusiasm.

During the Muslim Personal Law Awareness Campaign, a book had been issued in Urdu which was also got translated in various other languages of the country and was circulated on a very large scale. In this book, the correct Islamic family laws were presented and the Muslims were exhorted to act upon them. This book attained great popularity during the Campaign and everyone liked it.

The responsibility of writing this book was assigned to the undersigned. When the manuscript of the book was ready, it was vetted by the members of the Committee and gave suggestions to make it even better. In the light of these suggestions, additions and deletions were carried out in the book. I am thankful to Moulana Syed Jalaluddin

Umri, President, Jamat-e-Islami Hind; Engineer Syed Sadatullah Hussaini and Janab Nusrat Ali, Vice-Presidents, Jamat-e-Islami Hind; Dr. Muhammad Rafat, Chairman, Tasneefi Academy; Janab Muhammad Jafar, Vice-Chairman, Human Welfare Foundation; Janab H. Abdur Raqeeb, General Secretary, Indian Institute of Islamic Finance; Dr. Hasan Raza, Chairman, Islamic Academy and Indian Institute of Islamic Studies; and Dr. Syed Qasim Rasool Iliyas, Member, Central Advisory Committee and Convener, All India Muslim Personal Law Board that they read the entire manuscript with deep insight and offered valuable suggestions. May Allah grant them His best reward. Amen!

I had requested Moulana Syed Muhammad Rabe` Hasani Nadvi, President, All India Muslim Personal Law Board (I am honoured to be one of his students) to write a preface to this book. He graciously accepted my request. Praise be to Allah, with his preface this book has attained even more authenticity. I thank him with the bottom of my heart for his graciousness. May Allah lengthen his life and make his personality a source of benefit for the entire Muslim Community. Amen!

I pray Allah that this book be of benefit to all and a source of reward to me. Amen!

15 Ramazan al-Mubarak 1439 AH
31 May 2018

**Muhammad Raziul Islam Nadvi**
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# PREFACE

**(Hazrat Moulana) Syed Muhammad Rabe`Hasani Nadvi**
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**and**
**President, All India Muslim Personal Law Board**

*Praise be to Allah, Lord of the Universe, and Peace and Prayers be upon the Leader and Seal of the Prophets, Our Leader Muhammad, and upon his followers and all his Companions.*

The Religion of Islam, amongst the existing religions, is such a Religion which does not confine itself to only beliefs and performance of acts of worship by a particular group; rather, it is a Religion which provides guidance in the entire human life. It encompasses the beliefs, acts of worship, social and civil relationships and all individual and collective matters and issues instructions and ordinances about all of them. All these ordinances have been based on revelation, i.e. they have all come from Allah, the Lord of the Universe and, therefore, they are obligated to be followed by the Muslims. No additions or deletions can be made by any human being in these ordinances. The Indian Constitution also gives us the right and liberty to act upon our religious ordinances. Hence, if voice is raised from any quarters to amend the Muslim Personal Law, it is not acceptable to the Muslims. Because of this particularity, it became necessary to have a united Personal Law Board, which is, Praise be to Allah, has been established and is active.

It is essential that we should know, along with the general practical ordinances, the ordinances pertaining to social and collective aspects of Islamic way of life and act upon them. For this purpose, it is the responsibility of the

Islamic scholars to discharge this duty adopting oral and written methods.

It is a matter of great pleasure that this task of explaining different aspects of the Islamic Law and religious demands has been undertaken and completed by one of the renowned Islamic scholars, Dr. Muhammad Raziul Islam Nadvi. He has written a very beneficial and authentic book on those issues acquiring knowledge about which is essential for the Muslims so that they can act upon them and, when needed, explain them to others. This book fulfils the aforesaid need.

The said Moulvi Sahib has a particular penchant with research and elucidation of ideological issues. He has got good scholarly works to his credit. His organizational link is with the research wing of the Jamat-e-Islami Hind where his activities are highly regarded and appreciated. I have known him since his student days at the Darul Uloom Nadvatul Ulama. It is hoped that this book will fulfil the need of elucidating the Islamic Law.

05/03/1438 AH
05/12/2016

**Muhammad Rabe` Hasani Nadvi**
Administrator
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# MUSLIM PERSONAL LAW
## Moral and Legal ISSUES

## MUSLIM PERSONAL LAW: PRESENT POSITION

Soon after Independence, voices are being regularly raised against the Muslim Personal Laws, and plots and intrigues are being continuously hatched to abolish these laws. However, recently, this exercise has become more intense and the real intentions of the Government have come into open. The attitude that the Supreme Court has adopted during the hearing of a case of a non-Muslim couple with regard to triple Talaq and polygamy, the manner in which the Law Commission issued the questionnaire, and the stand of the Central Government has rightfully disturbed the Muslim organizations, Islamic Scholars, Muslim intellectuals, social workers and all other serious-minded people of the country. It has become essential now to take serious notice of this and create awareness in Muslims on this issue and regenerate the desire and passion in them to strictly follow and adhere to the Family Laws of Islam (Muslim Personal Law), make the people of other communities understand that Family Laws of Muslims are part of the Quranic Ordinances and are based on justice and fair play, and also make it clear to the Government that the Muslims will not tolerate any interference in the Laws bestowed by Allah and that they are ready to offer any sacrifice in order to protect their Personal Law.

## WHAT IS MUSLIM PERSONAL LAW?

Islam gives guidance in every segment of human life and formulates laws for its followers. A part of these laws are those which pertain to family life and in which the

rights and responsibilities of the members of a family have been fixed. These laws are known as the "Personal Law" or the "Family Law."

During the era of Muslim rule in India, Islamic Laws were in force in almost all the spheres of human life and Muslims used to follow and obey these laws. However, when the British came to power, they gradually began to replace the Islamic laws with British laws. At first, the criminal laws were abolished, then the law of evidence and law of contract were abolished, and then preparations began to be made to change the personal law too. At that juncture, Islamic scholars raised their voice. Because of their efforts, "The Muslim Personal Law (Shariat) Application Act" was enacted in 1937. This Law applies to Muslims and reads as follows, and is popularly known as the Muslim Personal Law:

> "Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including *talaq*, *ila*, *zihar*, *lian*, *khula* and *mubaraat*, maintenance, dower, guardianship, gifts, trusts and trust properties, and *wakfs* (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

After independence when the Constitution of India was formulated, under Article 25(1) of the Fundamental Rights it is stated that: "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." This Article gives protection to the Muslim Personal Law too. But unfortunately, under Article 44 of the Directive Principles of State Policy, it has also been mentioned that:

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." Since this Article conflicts with Article 25(1) which gives freedom of religion, the Muslim members of the Constituent Assembly protested against it; but still this Article about the uniform civil code has remained in the Constitution, based on which the Government, now and then, tries to promulgate uniform civil code by abolishing Muslim Personal Law, and even the Supreme Court delivers such decisions and judgements which clash with the Muslim Personal Law.

## OBJECTIONS AGAINST MUSLIM PERSONAL LAW

At the present time, a campaign against the Muslim Personal Law has been stirred up all over the country seemingly under a very well-formulated plot. It is being propagated that under the Muslim Personal Law, Muslim women are oppressed and that it does not treat them with justice and fairness, and hence it is the responsibility of the Government to provide them with justice under the Constitution; this aspect of the Muslim Personal Law has been taken up to target it. For example, it is being said that the right to divorce has been given only to men and that the women do not have any right to divorce their oppressive husbands; that men have been given the right to have four wives which is against the dignity and self-respect of women; that there is no system for the maintenance of divorced women; that women are entitled to only half of the inheritance of what men get; and that it prohibits adoption of children. Many more such objections are made over the Muslim Personal Law and many misconceptions about Islam and Islamic laws are being propagated all over the country, and these laws are being portrayed as outdated, oppressive and remnants of dark ages.

On the other hand, Muslims themselves are not well versed with the Islamic laws and most of them do not

follow them in letter and spirit. Because of this ignorance, instead of taking their disputes to the Shariat courts for adjudication, they take them to the Civil Courts of the country, where most of the time judgements are pronounced which are against the Islamic Law (Shariat). Therefore, it is felt expedient to briefly describe and explain the Family Laws of Islam so that the objections raised against them could be removed and their rationality could be proved beyond any doubt.

## ISLAMIC PERCEPTION OF MARRIAGE

Marriage is a religious and social necessity which is prevalent in all the religions and societies of the world. The perception of marriage that Islam gives is quite unique; you cannot find this perception in any other religion or custom except in Islam.

Sexual urge is part of the human nature. Many a times, strange and unusual methods are adopted to fulfil this urge. Some short-sighted persons are under the impression that it is an undesirable and evil act. They believe that man cannot achieve spiritual progress and advancement unless and until this urge is not suppressed or killed altogether. It is a well-known fact that in Christian and Hindu monasticism, sexual urge is suppressed and people are exhorted to adopt this method. On the other side, we find people on the other extreme who have adopted hedonism[1] where complete and unbridled freedom is given to fulfil this urge without any restrictions whatsoever.

Islam has adopted moderation in the fulfilment of sexual urge. It has neither instructed to suppress it nor has it given open licence to fulfil this urge in whatever manner one wants to fulfil it. In other words, Islam neither believes in monasticism nor does it believe in hedonism; rather it

[1] Hedonism is derived from the Greek word *hedone* meaning pleasure. It means pursuit of or devotion to pleasure, especially to the pleasure of senses.

has established the institution of marriage to fulfil ones sexual urge. It has instructed and urged society to marry off those who have remained unmarried and has also instructed the unmarried men and women to enter into wedlock. The Holy Quran exhorts:

> *"Marry those among you who are single, the virtuous ones among your slaves, male or female; if they are in poverty, Allah will give them means out of His grace; for Allah encompasses all, and He knows all things."* (24:32)

Hence, the Holy Quran says that it is the responsibility of the society that it should not allow any of its male or female members to remain single. This has been further clarified in one of the sayings of the Prophet of Allah (pbuh) thus:

> "O young people, whoever amongst you has the resources to marry should get married because it will purify your gaze and protect the passions of your private parts."[1]

A pious civilization and clean society depends on lawful sexual relations between men and women which can be established only through marriage. Through marriage alone a sense of responsibility is created in men and women and they take up the responsibility of nourishing and taking care of their offspring. Through the agency of marriage alone feelings of mutual love, mercy, help, sacrifice and cooperation are created. Without the institution of marriage, society will become a crowd of ferocious animals whose primary aim would be nothing but fulfilling its sexual urges. Many objectives of the marriage have been described in the Quran and the Sunnah. Some of them are as follows:

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[1] Bukhari: 1905; Muslim: 1400.

1. Its biggest benefit is that it protects the chastity of men and women and protects man from the snares of Satan.[1]

2. Its second objective is to create mutual love between husband and wife so that they could achieve peace and tranquillity through the company of each other and their mutual relationship could be established on strong foundation rising above momentary expediencies.[2]

3. The third objective is procreation in order to increase the human population, ensure its continuation and create strong an stable families, society and civilization.[3]

Under the Islamic law, marriage is solemnized by just proclaiming two words which are known as *Ijab* (proposal) and *Qubool* (assent), i.e. when either the boy or the girl himself/herself or his or her advocate expresses the desire of marriage (proposes the marriage) and the other accepts (gives his assent) in the presence of two witnesses, marriage is solemnized. The words expressing the desire to marry a particular person are known as *Ijab* (proposal), and the words expressing acceptance of the proposal by the other are known as *Qubool* (assent). These are the fundamental parts of marriage without which marriage is not valid. Moreover, it has also been ordained that marriage should be celebrated openly and not in secret, and therefore marriage should always be solemnized in the presence of two witnesses.

Islam has given the right of assent to the woman in the matter of her marriage. No adult girl can be married off without her assent; she has been given the right to choose her husband and she can openly declare her choice in this

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[1] The Quran, Chapter 4, Verses 24-25.
[2] The Quran, Chapter 30, Verse 21.
[3] The Quran, Chapter 16, Verse 72.

regard. The Prophet of Allah (peace be upon him) has ordained:

> "Marry off the women with their assent."[1]

## ISLAM HAS MADE MARRIAGE EASY

Islam has not only made entering into wedlock easy, but has made fornication more and more difficult and has declared it to be the most evil act and has warned against its evil consequences both in this world and the Hereafter.[2] The punishment prescribed for fornication is very severe: 100 lashes for an unmarried person, and stoning to death for a married person. Compared to this, marriage has been made easy. The instructions of the Prophet of Allah (pbuh) and the examples of his Companions are before us to emulate. The Prophet of Allah (pbuh) has instructed in one of the Sayings:

> "The best wedding is that upon which the least trouble and expense is incurred."[3]

Moreover, no impediment has been placed before the divorced and widowed women to remarry. During the era of the Prophet of Allah (pbuh) and his Companions, and thereafter for many generations, a divorced or widowed woman was never allowed to remain unmarried; she used to be married off as soon as possible. Sometimes, a woman used to get married even two, three or four times depending upon the situation. Even younger women were married off to older men, and older women were married off to younger men; this was never considered a shameful act. Anyhow, no man or woman, divorced or widowed or unmarried, was allowed to remain single and lead a life of celibacy.

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[1] Nasai: 3666.
[2] The Quran, Chapter 17, Verse 32.
[3] Musnad-e-Ahmed.

For example: There was one lady named Hazrat `Aatika. She was married to Hazrat Abdur Rahman, son of the first Caliph Hazrat Abu Bakr. When he was martyred, she married Hazrat Zaid bin al-Khattab. When he also was martyred, Hazrat `Umar Farooque married her. When he was also martyred, Hazrat Hasan bin Ali married her. Hence, she was begun to be known with the title *Zouja al-Shuhada* (Wife of the Martyrs).[1] Similarly, Hazrat Asma bint Umais was the wife of Hazrat Jafar bin Abi Talib. When Hazrat Jafar got martyred in the battle of Muta, Hazrat Abu Bakr married her, and after the death of Hazrat Abu Bakr, Hazrat Ali married her.

Hazrat Fatima bint Qais is a very renowned Companion of the Prophet. When her husband divorced her, she got three proposals of marriage. She approached the Prophet of Allah (pbuh) and said: "O Prophet of Allah, I have received proposals from such and such persons. Kindly tell me which proposal would be better for me." The Prophet of Allah (pbuh) said: "If you want my opinion, instead of these, marry Usama bin Zaid." Hence, she married Hazrat Usama bin Zaid and she herself told later that this marriage was proved to be very auspicious.[2]

## LAVISH AND UNSANCTIONED CUSTOMS OF WEDDING

It is a tragedy that in spite of the aforesaid very easy and unimpeded procedure of marriage, many lavish and extravagant customs pertaining to marriage have come into practice in the Muslim society. The customs like getting apparels made for the near and far relatives as gifts; music; exchange of gifts; custom of tilak; marriage procession; payment of dowry to the bridegroom; provision of expensive *jahez*[3] to the bride; arranging ostentatious

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[1] Usud al-Ghaba, Ibn Atheer, Vol. 7, p. 199-200.

[2] Muslim: 1480.

[3] The paraphernalia of a bride, vestments and furniture of every kind which a bride brings to her husband's house.

and expensive banquets; hiring of expensive marriage halls and their decoration and illumination, and many other customs and rituals alien to Islamic instructions and guidance and borrowed from other religions and customs have become permanent features of Muslim weddings. Performance of these rituals and customs involve heavy expenditure which always leave most of the parents heavily indebted. The weddings, nowadays, have become so expensive that most of the Muslims girls cannot get married and the parents shudder to just think about the marriage of their daughters.

There is no concept of *jahez* in Islam. There is no mention of *jahez* in the weddings that took place during the era of Prophet Muhammad (pbuh). There is no sanction in Islam for the manner in which *jahez* is given and taken today during the course of weddings. The only mandate that is to be followed is payment of *mahr* (dowry) to the bride according to the financial status of the bridegroom; nothing is to be demanded from the bride in the form of *jahez*. Moreover, the *mahr* should be modest and is better to be paid at the time of the marriage itself, although it is allowed to be postponed to a later date. The *mahr* of the wives of the Prophet of Allah (pbuh) was 500 Dirhams. This was the *mahr* of the Prophet's daughter, Hazrat Fatima too. When the Prophet of Allah decided to marry Hazrat Fatima with Hazrat Ali, he called Hazrat Ali and enquired about his financial position.[1] Hazrat Ali said he had nothing with him. The Prophet of Allah told Hazrat Ali to sell his armour and bring him the money. Hazrat Ali sold his armour and out of the money that he got, the *mahr* of Hazrat Fatima was paid and necessary household articles were bought to set up a separate household for the newly-wed.

Similarly, there was no perception of taking marriage processions during the era of the Prophet of Allah (pbuh). Hazrat Abdur Rahman bin Auf was the richest man

[1] It should be remembered that Hazrat Ali was brought up by Prophet Muhammad (pbuh) and was considered a member of the Prophet's family.

of Madinah. He got married in a simple ceremony where he did not even invite the Prophet of Allah (pbuh). When the Prophet of Allah came to know about it, he just told Hazrat Abdur Rahman bin Auf: "O Abdur Rahman, celebrate *walima* (marriage-feast) even by slaughtering one goat."[1] It should be noted here that in a small town like Madinah not all the inhabitants were invited to the marriage, not even the Prophet of Allah who was respected and considered very auspicious by every Muslim. Such was the simple nature of the marriages that were celebrated in the early Muslim society.

It is right time that the intellectuals and serious-minded persons of the Muslim Community should campaign against the lavish and unsanctioned customs of the weddings that are practised by Muslims, and educate the Muslims to make the marriages more simple and affordable.

## POLYGAMY

Islam permits polygamy on the condition of justice and fair play, i.e. a man can have more than one wife, but he cannot have more than four at a time.[2] The opponents of Islam target this ordinance and raise misplaced objections. This should be analyzed logically to understand all the aspects of the issue:

1. This is not an obligation which is to be acted upon by every Muslim; rather it is just a permission that if man feels the necessity he can marry more than once, the limit being set at four.
2. In some extraordinary situations and circumstances, like during wars men can get killed in large numbers leaving behind proportionately large number of women compared to living men. Such a problem can be solved with the help of

[1] Bukhari: 5072; Muslim: 1427.
[2] The Quran, Chapter 4, Verse 3.

polygamy. If polygamy is not permitted, there is every possibility of increase in acts of fornication and promiscuity.

3. Sometimes individual circumstances also demand polygamy. For example, if a person's wife is seriously ill which has rendered her incapable of having sex with her husband, the husband has the option to either divorce her and marry another woman or keep and maintain her as wife and marry another woman as a second wife. The second option is more humane and practical. Similarly, rich and wealthy men can marry divorcees and widows, both related and unrelated, who are in need of financial support and protection.

4. However, the permission for having four wives has been given on the condition that the husband should deal with all his wives justly. The Holy Quran ordains: *"But if you fear that you shall not deal justly (with them), then (have) only one (wife)."*[1]

5. It is a misconception that in India majority of Muslims practises polygamy. According to the census conducted every ten years in India, more number of Hindus are polygamous than Muslims, although under the law Hindus are not allowed to practise polygamy.

## SPHERE OF ACTIVITIES OF HUSBAND AND WIFE IN THE FAMILY SET UP

Islam has proclaimed that the rights and responsibilities of a woman are equal to those of a man, but are not necessarily identical as both have been created differently to play different roles in life. Where the aspects

[1] The Quran, Chapter 4, Verse 3.

of life resemble each other, the rights and obligations of a man and a woman are similar; and they differ where the aspects differ. For example, the Quran declares that a woman has the same Islamic duties as a man, and that she is equally rewarded for her good deeds, not more not less.

> *"Whoever works righteousness, man or woman, and has faith, verily to him will We give a new life that is good and pure, and We will bestow on such their reward according to their actions."*[1]

Never in the history of the world, under religions and constitutional systems, has a woman enjoyed the rights and privileges which Islam grants her. The rights and privileges that the Western women got in the 19th and 20th centuries after great struggle and movements had been bestowed on women by Islam centuries ago. Islam grants a woman the equal right to contract, enterprise, to earn, and to possess property independently. Her life, her property and her honour are as sacred as those of a man. However, nature has not willed perfect equality between a man and a woman, but has willed a complementary distribution of avocations and functions. Therefore, the sphere of activities of women has been declared to be her home where she has been given the responsibility of looking after the children and doing other household chores, while the responsibility of man is to earn and maintain the family. Hence, the Prophet of Allah (pbuh) has said:

> "Man is the guardian of his household and he will be accountable for his subjects. Woman is the guardian of the household of her husband and his children, and she will be accountable for them."[2]

Because of this important responsibility, woman has been kept free from earning her livelihood and her

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[1] The Quran, Chapter 16, Verse 97.

[2] Bukhari: 7138; Muslim: 1829.

husband has been made responsible for her maintenance and upkeep. It does not mean that Islam has made women subordinates of men and has given men oppressive and tyrannical power over women. Keeping the women free from taking up economic activities is, in fact, an honour and dignity that has been bestowed on them and not an act of degrading them. However, if need arose, women can involve themselves in economic activities too keeping within the limits of Shariat. In such an event, whatever they earn becomes their own property.

In Islam, husband and wife are not rivals but are companions and beloved of each other. The Holy Quran says: *"The Believers, men and women, are protectors, one of another."*[1] However, their rights and responsibilities have been fixed at different levels, which are as follows:

**A Husband's Sphere of Activity**

It is the husband's responsibility:

- To earn for the family and provide for it.
- To make arrangements for proper education of the children – both religious and temporal.
- To bring them up as good Muslims and good citizens of the country.
- To cultivate in them a deep sense of responsibility, morality, honesty, etc.
- To do all these, he himself should be an upright, honest and knowledgeable person; he should set a good example for his family members.

**A Wife's Sphere of Activity**

- Islam basically limits a wife's sphere of activity to her household.
- It does not burden her with the dual responsibility of earning and running her home; this is cruel.

[1] The Quran, Chapter 9, Verse 71.

- Women have been brought out of their homes in the name of equality, liberation and empowerment. This has not provided them with any convenience or comforts; on the contrary, it has overburdened them.
- Working women not only work in their workplaces during the day, but work at home too in their spare time; quite often husbands/male members of the household never assist them in their household chores.
- Result: Women have become slaves and the upbringing of children has suffered beyond imagination.
- Islam, therefore, specifies that earning a livelihood and providing for the family is the responsibility of a husband, while a wife is given the equally important responsibility of looking after the household and upbringing of children; it is a full-time job.
- However, if circumstances demand that a woman should work to maintain herself and her family or do such jobs which only a woman can do, then she is not only allowed but is encouraged to work.

After the division of the spheres of activities between husband and wife, Islam has imposed an additional responsibility on man; that is, he has been made head of the family. To run an institution in an organized way, it is required that it should have an administrator or head who can supervise its working and its workers and keep the institution well organized. Also it is necessary to develop mutual love and cooperation amongst his subordinates; recognize and protect their rights; and cultivate such an environment that his subordinates willingly follow his instructions. This responsibility can be given only to one person and not many, because if many persons were collectively made heads of an institution with equal rights and powers it results in chaos and disorganization and the institution cannot be run successfully even for a few days. Husband and wife are two important units of a family and the leadership of the

family can be given to only one of them. Islam has bestowed this responsibility on man. The Holy Quran commands:

> *"And women shall have rights similar to the rights against them, according to what is equitable; but men have a degree (of advantage) over them."* (2:228)

Because of this responsibility, the Quran has described men as the "Protectors":

> *"Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means."* (4:34)

After giving the authority of leadership of the family to husband, clear instructions and guidance have been given in the Quran and the Sunnah about the rights and duties of husband and wife.

## RIGHTS AND DUTIES OF HUSBAND AND WIFE

There is a very deep relationship between rights and duties. After entering into marital relationship, the rights of the husband become the duties of the wife, and the rights of the wife become the duties of the husband. Hence, the Holy Quran declares:

> *"And women shall have rights similar to the rights against them, according to what is equitable."* (2:228)

Among the rights of the husband which are to be fulfilled by the wife, two are very important. One is that the wife should obey the husband in all things equitable and good. Describing the attribute of righteous women, the Holy Quran says:

> *"Hence, the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard."* (4:34)

In the aforesaid Verse, the second attribute of the righteous women that has been described is that they *"guard in (the husband's) absence what Allah would have them guard."* In fact, this the second right of the husband that has been obligated upon the wife. It means guarding all those things which remain in trust with her in the absence of her husband, which include safeguarding the lineage, protection of chastity, protection of the wealth and property, upbringing of children, protection of secrets, etc.

Islam has also given protection to the rights of the wife so that the husband is stopped from oppressing the wife taking advantage of the authority bestowed on him, and that she can contribute to the family and the society by utilising her natural talents and faculties.

The foremost right of a wife is her *mahr* (dower). The Holy Quran ordains:

> *"And give the women (on marriage) their dower as a free gift."* (4:4)

*Mahr* is that money which is paid by man to the woman at the time of marriage or promises to pay it later. There are two types of *mahr*: One is *Undelayed Mahr* which is paid on the occasion of the marriage itself, and the other is *Delayed Mahr* which is promised to be paid later. This payment of *mahr* is obligated upon the husband. Therefore, it should be fixed according to the financial status of the husband so that he could easily pay it. It is not correct to fix exorbitant *mahr* for ostentation or in order to deny the right of divorce to the husband in case of *Delayed mahr*.

During the reign of the second Caliph, Hazrat Umar Farooque, when people began to fix exorbitant sums of

money as *mahr*, he addressed the people and said: "O people, do not exaggerate in fixing the *mahr*. If this would have been a thing of pride and dignity in this world and a reason for rewards in the Hereafter, the Prophet of Allah (pbuh) would have adopted it in the first place."[1] The Prophet of Allah (pbuh) fixed the *mahr* of his daughter Hazrat Fatima at 500 Dirhams, which is popularly known as *mahr-e-Fatimi*. According to the prevalent weights and measures, 500 Dirhams are equivalent to 1531 gram (about 1 ½ kilogram).

If *mahr* is not fixed at the time of the marriage, it is not condoned; rather the husband has to pay to his wife *mahr-e-mithal*, i.e. the amount of the *mahr* generally fixed for the women in the family. Instead of cash, moveable or immoveable property like house, site, etc. can be paid as *mahr*. Jewellery can also be paid as *mahr*, but it should be specified at the time of the marriage ceremony so that it should not be confused with the gift usually given to the bride.

The second right of the wife is that her husband should provide her with sustenance. The husband is obliged to provide for his wife, with food, clothes, shelter and other necessities of life.[2] There is no fixed standard of sustenance; it can be meagre or more according to the income and financial status of the husband.[3] Sustenance also includes things of adornment, medical treatment and expenses incurred during child-birth and day-to-day requirements. If a husband has given permission, wife can spend out of her husband's money whenever a necessity arises. If the wife saves some money from the money given by the husband for household expenses, the money so saved will become her property and the husband shall have not right to demand it nor is he permitted to decrease the amount of sustenance.

The third right of the wife is that she should be treated well by her husband. The Holy Quran and the

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[1] Abu Dawood: 2106.

[2] The Quran, Chapter 4, Verse 34.

[3] The Quran, Chapter 2, Verse 236; Chapter 65: 7.

Sayings of the Prophet are very specific in this regard. The Holy Quran ordains:

> *"Live with them on the footing of kindness and equity."* (4:19)

In one of the Sayings, the Prophet of Allah (pbuh) said:

> "Amongst the Faithful, the most perfect person is that who has noble nature and character, and the best amongst you are those who are good-natured with their wives."[1]

## SOLUTION TO DISCORD BETWEEN MARRIED COUPLE

If the married couple live together harmoniously within the limits prescribed by Allah and His Prophet, discharging the rights and duties obligated on each other, ignoring the shortcomings of one another and jointly taking care of their offspring, their household becomes an abode of peace and tranquillity. On the contrary, if the married couple do not give due regard to the rights of one another, either the husband oppresses the wife or the wife disobeys the husband, the household becomes hell and there will not be any marital bliss left resulting in the neglect of proper upbringing of the children.

In this context, the Holy Quran has particularly exhorted men to be patient with their disobedient wives and try to correct them with patience, kindness and love. The Quran has advised the men not to be hasty in severing the relationship with their wives; rather think that Allah might bring a great deal of good through them.[2] Moreover, the Quran goes a step further and instructs *"as to those women on whose part you fear disloyalty and ill-*

[1] Tirmizi: 1162.

[2] The Quran, Chapter 4, Verse 19.

*conduct, admonish them (first), (next) refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means of (of oppressing them).*"[1]

## COOPERATION OF THE FAMILY TO REMOVE DISCORD

It is highly desirable that in the event of discord between husband and wife, they themselves should try to sort out their differences. If they are not successful in their efforts and the discord and differences remain, then their respective families should try to bring in peace between them by eliminating the differences. The Holy Quran says:

> *"If you fear a breach between the two, appoint (two) arbitrators, one from his family and the other from hers; if they wish for peace, Allah will cause their reconciliation."* (4:35)

If the arbitration too fails, it means that the discord has reached the stage of hate and that it has become impossible for them to live together as a married couple and that it would be better that each of them should chalk out their own ways, and if they so wish can choose marital partners of their liking. Hence, at this juncture, Islam reluctantly suggests that they separate from each other and has prescribed the procedure of separation which is known as *Talaq* (divorce).

## *TALAQ:* AN UNPLEASANT NECESSITY

Nowadays, *talaq* has been made a burning issue, particularly, in the media. Everywhere it is being discussed and debated upon and every Tom, Dick and Harry who has no inkling or knowledge about it is discussing the issue

[1] The Quran, Chapter 4, Verse 34.

and offering his "considered" opinion and solution to this "issue," which in their opinion has become a tool to oppress Muslim women. They say that *talaq* is an oppressive and tyrannical act and that it should be banned or abolished. The reason, besides prejudice and enmity towards Islam, is lack of correct information about the necessity of talaq, its efficacy and the wisdom behind it.

Marriage is a covenant or contract between man and woman and the Quran has described it as *meethaq ghaleez* (solemn covenant). It should not be taken lightly. It should be entered into with total commitment and full knowledge of what it involves. The partner selected should be the choice for life. One should be mature enough to understand the demands of marriage so that the union can be a lasting one. *Talaq* should be resorted to when all devices fail to bring in reconciliation between husband and wife.

*Talaq* is similar to surgery which is resorted to when all other medicines and treatments fail to cure a patient. When there is a rupture in the marital relationships and all other efforts fail to bring in again harmonious relationship, the Islamic Law has reluctantly given permission to sever the marital relationship with the help of *talaq*. If the surgery fails and the patient dies, no one demands that surgery should be banned altogether. Similarly, if the institution of talaq is misused, it is not correct to demand that it should be abolished; instead, its usefulness should be acknowledged and its correct use should be made known to the people.

The Islamic Law has permitted divorce (*talaq*) when there is no other option left and the husband and wife have insolvable differences. The lexicological meaning of the word *Talaq* is to untie a knot. Since with *talaq* the knot of marriage is loosened, it is known as *talaq*. Although permission has been given in the Islamic Law for divorce, it has been declared as an undesirable act. In one of the Sayings of the Prophet of Allah, it is said that Satan is the

happiest when there occurs a separation between husband and wife and thus a home is destroyed.[1]

## KINDS OF *TALAQ*:

There are three kinds of *talaq*:

**(1) *Talaq-e-Raja`yee* (Revocable Divorce):** That is, that divorce in which husband can revert back to his wife without remarrying her, whether she is agreeable or not, after the pronouncement of the talaq within the period of Iddat.[2]

**(2) *Talaq-e-Baayen* (Irrevocable Divorce):** When a husband divorces his wife and then allows the period of Iddat to lapse, he cannot revert back to his wife, but can remarry her with her consent with payment of fresh mahr to her.

**(2) *Talaq-e-Mughallaz* (Binding Divorce):** In this kind of divorce husband can neither revert back to his wife nor can remarry her and this situation comes into existence when the husband pronounces the third talaq. However, if the divorced woman gets married to another person and then he divorces her or dies, the previous husband can marry her again on the condition that both of them give their consent to such a marriage.

## METHOD OF *TALAQ* (DIVORCE)

There are two methods of *talaq* (divorce):

### 1. *Talaq-e-Sunnah* (Regular form of Divorce)

The "most laudable divorce" (*Talaq-e-Ahsan*) is that in which the husband pronounces the "revocable divorce"

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[1] Muslim: 2813.

[2] That is, a period of three lunar months.

(*talaq-e-raja'yee*), i.e. pronounces once the words of divorce "You are divorced," when his wife is in *tuhr* ("state of purity," that is when she is not menstruating) and did not have any intercourse with her, and allow the prescribed period of *Iddat* to pass. As soon as the period of Iddat is passed the divorce becomes "irrevocable divorce" (*talaq-e-baayen*). However, the husband can remarry again his divorced wife with the consent of the wife and after payment of *mahr* afresh. The husband is also allowed to pronounce one *talaq* (i.e. the words of the *talaq*, "You are divorced") in the first *tuhr* of his wife, and the second *talaq* in her second *tuhr*, and the third *talaq* in her third *tuhr*; this method is known as "laudable talaq" (*Talaq-e-Hasan*).

### 2. *Talaq-e-Bida`t* (Irregular form of Divorce)

The divorce that is given against the teachings of the Quran and the Sunnah is known as "irregular divorce." For example, pronouncing talaq three times all at once, or pronouncing the talaq when the wife is not in tuhr (i.e. when she is in the state of menstruation), or when he had intercourse with her wife. Although, these forms of divorce are irregular, the divorce pronounced this way is held valid under the law.

If the occasion arises when it becomes necessary to divorce, it is better to adopt the method of the "most laudable divorce" (*Talaq-e-Ahsan*), i.e. just pronounce only one *talaq* and let go of the wife after the period of *Iddat*. "Irregular Divorce" (*Talaq-e-Bida't*) is highly undesirable, but if pronounced it becomes not only legally valid, but the pronouncer of such a divorce commits a grave sin. On the other hand, in the event of adopting the method of "most laudable divorce" (*Talaq-e-Ahsan*), the husband gets all the time to think over the matter and reverse his decision. Moreover, the wife remains in the house and if the husband wishes he can revert back to his wife during the period of *Iddat*. If the husband does not revert back to his wife during the period of *Iddat*, the wife is released from the bondage of marriage, but opportunity always remains for a remarriage with mutual consent and payment of fresh

*mahr* to the wife. The objective of *talaq* is to end the marital relationship and it can be achieved by pronouncing just one *talaq*.

In practical life, man uses only that much which is required. For example, if thirst can be quenched with one glass of water, he does not use ten glasses of water. Similarly, if a child can be admonished with just a light slap, he need not be beaten black and blue. When one tablet can cure him of his aches, he does not take them for months together. Similarly, if with one *talaq* wife can be divorced, there is no necessity for the husband to pronounced three *talaqs*.

The objective of the Quran in prescribing the laudable (*Ahsan*) method of divorce is to give the husband two opportunities on two different occasions to save the marriage.[1] Hence, it warns him that if he pronounces the *talaq* for the third time, his wife would be lost for him.[2] When the husband pronounces three talaqs at the same time in one sitting, he loses these opportunities. When a person divorced his wife during the era of the Prophet of Allah (pbuh) in one sitting and the news reached the Prophet of Allah (pbuh), he got very angry and said: "Is the Book of Allah trifled with in my presence?"[3]

## ISSUE OF TRIPLE TALAQ

There are two opinions with regard to the issue of triple *talaq*. Majority of the Companions of the Prophet of Allah, *Tabayeen* (followers of the Companions), the four Imams of the four *fiqh* (jurisprudence) consider the triple talaq as three *talaqs*, while a few of the Companions and the Tabayeen, Allama Ibn Timiyah, Allama Ibn Qayyim, Sheikh Dawood Zahari, Allama Shaukani and the *Ahl-e-*

[1] The Quran, Chapter 2, Verse 229.
[2] The Quran, Chapter 2, Verse 230.
[3] Nisai: 3401.

*Hadeeth* consider as only one *talaq*. Both the groups have their own respective arguments and evidences by which they prove their viewpoint, and they are in practice since a long time.

It is the considered opinion of the Islamic scholars belonging to the Hanafi school of jurisprudence that if the pronouncer of triple *talaq* claims that his intention was to pronounce only one *Talaq* and that to stress the point he pronounced the words of *talaq* thrice, then his statement would be accepted after taking an oath from him, and triple *talaq* would be declared as only one *talaq*.

There is lot of confusion in the Muslim Community about *talaq*. They think and also they are made to understand that unless and until three *talaqs* are not pronounced, the *talaq* would not be valid. It is necessary to remove this misconception from the mind of the Muslim masses and educate them the correct method of talaq which has been prescribed by the Quran and the Sunnah.

## PLANNED *HALALA* IS UNLAWFUL

Some Muslims, because of ignorance and in a state of anger, pronounce triple *talaqs* in one sitting. When such a person is told that neither can he revert back to his wife nor can he remarry her and that he has to be permanently separated from his wife, and that he can again remarry her only in the event of her marrying some other person and he in turn divorcing her,[1] he tries to prepare some other person to marry his divorced wife and then divorce her so that he can marry her again. This is known as *halala* (unblocking).

On the other hand, if in the normal circumstances such a situation arises, without any planning or plotting, where the divorced wife gets married to another person and he in turn divorces her or dies, the former husband

[1] The Quran, Chapter 2, Verse 230.

can marry her again. However, if this is pre-planned it becomes a very heinous act which is unlawful in Islam. The Prophet of Allah (pbuh) has called that person who offers himself for this purpose as a "hired bull." Hazrat Uqba bin `Aamir narrates that the Prophet of Allah (pbuh) once asked his Companions: "Shall I tell you who is the "hired bull?" The Companions replied: "Yes, O Prophet of Allah." He said: "He is a *Muhallil."*[1] Then he said: "Allah's Wrath is on that man who offers himself for this task and also on that person who prepares him for this task."[2]

One should ponder and try to understand that when the purpose of divorce is accomplished with pronouncing *talaq* just once, there is no necessity of pronouncing it thrice which is nothing but a foolish act. It is even more foolish and a blunder to arrange for a *halala* or *muhallil* after hastily pronouncing the talaq thrice and rendering his divorced wife unlawful to marry again and thus invite the Wrath of Allah on him. No sensible and a true Muslim will ever act in such a manner. The more rational and practical thing is not to allow matters to go bad which lead to divorce, and when it becomes necessary to divorce, just pronounce a single *talaq* which is enough to validate the divorce.

## KHULA, MUBARAT AND TAFREEQ

As the Shariat has given right to the husband to divorce the wife by pronouncing *talaq* in the event of incompatibility between them, so also it has given the right to the wife to divorce her husband which is known as *Khula*. The difference between *talaq* and *khula* is that in the event of *talaq*, husband has no right to claim back the

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[1] *Muhallil* is that "man who marries a woman that has been thrice divorced on the condition of his divorcing her after consummation of the marriage, in order that she may become lawful to be remarried to the former husband. [Lane, Edward William, *An Arabic-English Lexicon*, Part 2, p. 622, Beirut, Lebanon, 1968.]

[2] Ibn Maaja: 1936.

*mahr* he has paid to the wife, while if the wife wants *khula* from her husband, then she may have to return back the *mahr* partially or wholly to the husband; this has been clearly ordained in the Holy Quran:

> *"If you do indeed fear that they would be unable to keep the limits ordained by Allah, there is no blame on either of them if she gives something for her freedom."* (2:229)

Consent of both husband and wife is necessary for *khula*. If the wife obtains the consent of the husband for the *khula* by giving up her *mahr*, or returns it if she has already received it, or pays him something extra, the *khula* becomes final and an Irrevocable Divorce (*Talaq-e-Baayen*) comes into effect. Later in the life, the divorced couple can remarry if they wish to do so.

Another form of *khula* is known as ***mubarah***. Here the divorce between the husband and wife occurs when the husband tells his wife that I have divorced you on the condition that you should give up all your rights against me and the wife accepts it and says that I have freed you from all your obligations.

If the husband refuses to grant *khula* to his wife, then the wife can approach the Shariat court (*Darul Qaza*) and get the marriage annulled by the Judge (*Khazi*); this is known as ***Tafreeq***.

## TAFWEEZ-E-TALAQ (DELEGATION OF POWER TO DIVORCE)

The Shariat (Islamic Law) has given the right to divorce to the husband because he alone bears the marriage expenses, pays *mahr* to his wife and takes the responsibility of sustaining and maintaining her. However, if he delegates this right to his wife by saying that I delegate the power of talaq to you, then the wife gets the

right and can get herself divorced whenever she wish. This is known as *Tafweez-e-Talaq* (delegation of power to divorce). However, the right of the husband to divorce does not get annulled with *Tafweez-e-Talaq.*

## FORMS OF *IDDAT* AND ITS REGULATIONS

The lexicological meaning of *Iddat* is counting. It means that waiting period which the Shariat has fixed when a marriage ends. During this period, the woman cannot remarry. There are three kinds of *Iddat*:

1. **Three periods of menstruation.**[1] This regulation is for those women who menstruate. For those who do not menstruate because of either not reaching puberty or because of old age, the Quran has fixed the period as three lunar months.[2]

2. **Four months and ten days.**[3] This is for those whose husbands have died.

   The above two forms of *Iddat* are for those who are not pregnant at the time of divorce or at the time of the death of their husbands.

3. **The period of pregnancy.** At the time of divorce or at the time of death, if a woman happens to be pregnant, then her *Iddat* is delivery of the child; as soon as the child is delivered whether immediately after the death of the husband or the validation of divorce, the woman completes her *Iddat.*

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[1] The Quran, Chapter 2, Verse 228.
[2] The Quran, Chapter 65, Verse 4.
[3] The Quran, Chapter 2, Verse 234.

The fundamental objective of *Iddat* is to confirm whether the woman is pregnant or not. During the period of *Iddat*, woman is prohibited to come out of her home without any dire necessity. Similarly, she is prohibited to wear beautiful clothes and adorn herself. It is not permitted for any man to propose to the woman in *Iddat* in clear terms; however, it can be hinted upon indirectly. The prohibition to wear beautiful clothes and to adorn is only for those women who have been given Irrevocable Divorce or the Binding Divorce or who have been widowed; the woman who has been given the Revocable Divorce can do so.

## MAINTENANCE OF THE DIVORCED WOMEN

During the period of *Iddat*, the divorced or widowed woman shall remain in the house of her husband and shall be entitled to receive maintenance for the period of *Iddat*. After the completion of the period of *Iddat*, her close relatives shall be responsible for her maintenance.

Some people are of the opinion that the divorced woman shall be entitled to receive maintenance from her husband for the rest of her life, since she has spent a major part of her life with her husband and after the divorce she has become a destitute. These people have not fully understood the Islamic system of maintenance.

The Verse of the Quran in which maintenance for the divorced woman has been ordained, uses the Arabic word *mataʿ* to denote it. The said Verse reads as follows:

> *"For divorced women maintenance (should be provided) on a reasonable scale. This is a duty on the righteous."* (2:241)

*Mataʿ* means a few things and goods which can be utilized for the time being. This has not been fixed in the Quran; rather, it has been left to the custom prevalent in the society. However, Muslim men have been exhorted to

be beneficent and magnanimous towards the women they divorce and pay them handsomely while sending them out of their lives.

Islam has not deserted the divorced woman; rather, it has made arrangements for her maintenance. If her father is alive, it has obligated him to look after her divorced daughter. If the father is not alive, it has obligated her nearest relative like uncle or brother or any other relative to look after her. If the divorced woman has grownup children and they are well-off, they are obligated to look after her. If there is no relative alive to look after a divorced woman, then it is the responsibility of the Muslim Community to look after her; such women should be helped from the funds of Zakat, other charitable institutions and the Auqaf.

Marriage is an honourable contract of companionship between a man and a woman, and the divorce is the end of that contract. A wife is given sustenance because of the marriage, and this ends with the dissolution of the marriage. If the husband is forced to pay maintenance to his divorced wife even after the period of *Iddat*, it would be an unnecessary financial burden on him. Moreover, it would be against the honour and self-respect of the woman too. In that case, husbands would never divorce their wives and would keep them suspended neither freeing them nor giving them their rights.

## *HADANAT* (BRINGING UP OF CHILDREN)

To some extent, the maintenance of the divorced woman can be solved with the provision of *Hadanat*. If the divorced woman has small children, they have to be looked after and brought up by her; boys till the age of seven or eight years and girls till they attain puberty. In such an event, the father of the children has to pay for the expenses incurred for the bringing up of his children by his former wife and also give her some money towards her

own expenses; this would not be considered as maintenance but as service charges for upbringing of the children. The divorced woman shall have the right to *hadanat* till her remarriage. After her remarriage, this right of looking after the children gets transferred to her nearest relatives such as parents or grandparents or aunts or sisters, etc.

## ISLAMIC LAW OF INHERITANCE

Islam has its own Law of Inheritance, according to which the shares of all the eligible heirs of a deceased person have been stipulated and determined, and its performance is obligatory on all Muslims. Both the male and female heirs of a deceased person are eligible to receive their respective shares. Whether the inheritance is large or small, it has to be divided according to the stipulations of the Quran and the Sunnah. Allah ordains in the Holy Quran:

> *"From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large – a determinate share."* (4:7)

When a person dies, the wealth and the property left behind by him is to be disposed off in the following manner:

1. On his funeral expenses.
2. His will be implemented on the condition that it should not exceed one-third of his entire estate and is not in favour of any of his legal heirs.
3. Loans, if any, will be repaid.
4. Whatever remains thereafter will be distributed amongst his legal heirs.

The Islamic Law of Inheritance is not based on poverty or necessity that the poorest is supposed to get larger share in the inheritance. Rather, it is based on kinship. Kindred can be many, but the Islamic Law

considers only the nearest relatives eligible to receive the inheritance of a deceased person.

Negligence, deviation and indifference are generally found in the Muslim Community with regard to division of inheritance according to the regulations set out by the Quran and the Sunnah. After the death of a person, his property remains undivided for years together or it remains under the use of a few combined heirs and the others are denied their share; the share of the widow and aged heirs is not given; the share of the women particularly in agricultural lands is never given and the women themselves refuse the share fearing retaliation from their brothers and other male relatives which might result in severing their relations. Moreover, it is usually considered that the expenses incurred during the marriage of the female members of the family and the money and other things given to them as gifts wipes out their share in the inheritance of his parents. All these thoughts and practices are against the teachings of Islam. In the Holy Quran, the laws of inheritance have been described as the "limits of Allah," transgression of which will land a person in Hell in the Hereafter. The Holy Quran avers:

> *"Those who disobey Allah and His Messenger and transgress His limits will be admitted to a Fire, to abide therein; and they shall have a humiliating punishment."* (4:14)

It should be remembered that the question of inheritance rises only after the death of a person. There is no sanction in the Islamic Law for a person's offspring to demand their share in his property when he is still alive. However, a person can divide and willingly give away his property to his offspring in his lifetime, but such a division and apportioning will not be considered division of inheritance, but a gift (*hiba*) from him. A person is the master of his property and he can dispose it off according to his will and wish. However, if he wants to divide his property among his offspring, the Islamic Law says that he

has to divide them equally among all his children. To be on safer side, he should consult and seek opinion from the Islamic scholars who are well-versed in the Islamic Law of Inheritance.

## SHARE OF WOMEN IN INHERITANCE

Misconceived objections are raised against the Islamic Law of Inheritance particularly with regard to the share of women in the property. The objectors cite the share of women being half of that of men, as an example of gender inequality in Islam. This is not entirely true. Only in certain circumstances a woman gets half of what a man gets as inheritance; in other circumstances, a woman gets more than the share of a man.

For example, if a person dies leaving behind his parents and one daughter, the daughter gets half of the property and the parents each get one-sixth. In certain circumstances, both men and women get equal shares. For example, if the inheritors are only husband and one sister, the inheritance would be divided equally among them. Only in a few circumstances, the share of women becomes half of the share of the men. For example, in the event of a deceased person leaving behind boys and girls or sisters and brothers, then only the share of the female inheritors become half of the male inheritors. This difference is not based on gender. If it were to be so the share of the son would not have been less than that of the father, or the share of the mother would not have been less than that of the daughter.

The fundamental reason for this difference is the status of man and woman in the Islamic society. Man has been assigned the responsibility of earning the livelihood and maintaining the members of his family, whereas woman has been exempted from this activity. In childhood, a woman is looked after by her father, in married life, by her husband, and in old age by her offspring. Moreover, whatever wealth she possesses will be safe with her as she need not spend on others, whereas man has to spend

his wealth on the upkeep of his wife and other members of his family. Hence, it is just and fair that the share of man should be double of that of the woman; if equality were to be maintained, it would be unfair to man.

This is the reason that whenever the financial responsibility of man gets lessened or ends, no difference is made between men and women with regard to division of inheritance. For example, if the deceased has left behind his parents along with his offspring, then the share of both his father and mother has been fixed as one-sixth, because in the event of a person having grownup offspring who themselves are married and settled, his responsibility as far as financial matters are concerned gets lessened and sometimes is non-existent, and his status would generally be that of a guardian of his grandchildren. However, if the deceased person has no offspring and his father has other offspring (i.e. the brothers and sisters of the deceased), then the father has to bear the financial burden of bringing up his children. Therefore, the share of the father, in this circumstance, has been fixed more than that of the mother, i.e. the father gets two-third and the mother gets one-third.

## THE ISSUE OF ORPHANED GRNDCHILDREN

One of the objections raised against the Islamic Law of Inheritance is that it has deprived the orphaned grandchildren of any inheritance from the property of their grandfather. While raising this objection, the objectors portray such a grave picture of deprivation of the orphaned grandchildren that they would die of hunger and destitution if they were denied their share in the inheritance. Then the Islamic Law of Inheritance is targeted and is said that this Islamic Law is oppressive and that it deprives inheritance to the most eligible of the heirs and that it is not fit for the modern times.

In fact, these objectors do not know the wisdom, nuances and the regulations of the Islamic Law of Inheritance. Their show of concern with regard to the orphaned grandchildren is just ostentation and nothing else. Instead of discussing and paying attention to the other ways and means of helping the orphaned grandchildren, they want to help them in the way which is against the Islamic Law (Shariat).

As has been described earlier, the basis on which the inheritance is divided under the Islamic Law is not based on poverty and destitution; rather it is based on the nearest relationship with the deceased person. In the presence of the nearest relatives, the distant relatives are deprived of the inheritance. When a deceased person leaves behind sons, daughters and grandchildren, the sons and daughters being his nearest relatives become eligible for the inheritance and the other distant relatives including the grandchildren being distant relatives are rendered ineligible to get the inheritance.

The issue of inheritance rises only after the death of a person. When a son of the deceased father has predeceased him and is not present at the time of the death of the father, he cannot be considered to receive a share in the inheritance of his deceased father. When the predeceased son is not eligible to get any share in the inheritance, evidently his children would also be not eligible for the share in the inheritance. However, it does not mean that the Islamic Law has no provision for the upkeep of the orphans and that it has left them in the lurch. The Islamic Law has made provisions for them in the following manner:

1. Part of Verse 233 of Chapter 2 of the Quran avers: *"An heir shall be chargeable in the same way,"* i.e. if the father of the child has died, he should be looked after by that person who becomes eligible to receive the inheritance of the child in the event of his death. Thus, the jurists have argued and proved from this that it is the responsibility of the nearest

relatives to bring up the orphaned grandchildren. In other words, the uncles of the orphaned grandchildren who have inherited the inheritance of their deceased father would be responsible to maintain and bring up the children of their deceased brother.

2. There is a provision for making a will in the Islamic Law (Shariat). The Verses of the Quran which describe the laws of inheritance repeatedly ordain to implement the will, if any, after payment of the loans.[1] Hence, the requirement of the orphaned grandchildren can be met with a will executed by their grandfather in his lifetime, which however, should be confined to the one-third of his property. This way, the orphaned grandchildren are assured of economic protection.

3. It has been instructed in the Quran that at the time of division of inheritance, something out of the inheritance should also be given to those distant relatives who are not eligible to receive inheritance.[2] This instruction can be followed by the legal heirs to give some portion of the inheritance to the orphaned grandchildren too.

4. The Quran also instructs to show benevolence and kindness to all blood relatives and not to sever the relations of kinship. The orphaned grandchildren are all the more eligible for this kindness. If their relatives discharge their responsibilities towards them, they will never face any financial difficulties in their lives.

The objectors of the Islamic Law of Inheritance generally portray the issue of the orphaned grandchildren by always assuming that their grandfather is always rich and his orphaned grandchildren are always poor. This is

[1] The Quran, Chapter 4, Verse 11.
[2] The Quran, Chapter 4, Verse 8.

not true. Quite often, a grandfather is dependent on his offspring for his sustenance and his orphaned grandchildren are themselves are rich and well-off having inherited money and property from their deceased father. Hence, the question of the inheritance of the orphaned grandchildren is a nonissue and has been blown out of proportion by the detractors and opponents of Islam.

## THE ISSUE OF ADOPTION

There is a law concerning adoption in the Muslim Personal Law. In adoption, an issueless couple adopts someone else's son or daughter and bring him up or her as their own son or daughter. Under Islamic Law, it is prohibited. Of course, Islam permits taking care of a poor child of another person and bringing him up, giving him good education and marrying him off and considers it as an act of benevolence and charity which carries rich reward with Allah; this reward increases many times over, if the child brought up happens to be an orphan. The Prophet of Allah (pbuh) once said:

> Hazrat Sael bin Sa'd says that the Prophet of Allah (peace be upon him) said: "I and the guardian of an orphan and other indigents will be in the paradise like this and then pointed to his forefinger and the middle finger and kept only a very small gap between the two fingers."[1]

However, Islam stresses more on the protection of lineage and does not permit a person to declare offspring of others to be his own offspring. The Holy Quran declares:

> *"He (Allah) has not made your adopted sons your sons. Such is (only) your (manner of) speech by your mouths. But Allah tells you the Truth, and He*

[1] Bukhari: 5304.

*shows the (right) Way. Call them by (the names of) their fathers; that is more just in the sight of Allah."* (33:4-5)

If the adopted child is given the status of real child, it will have a bearing on the other Islamic laws. For example, if the husband and wife are childless, then they will be apportioned less in the inheritance if they were declared having children. Similarly, if a person is childless his certain relatives get shares in his inheritance, whereas in the event of his having children they get nothing; for example, if the sister is childless, his brother will be her heir. This will also affect the laws of marriage and will result in the adopted son or daughter being prohibited to marry those girls and boys who are generally not prohibited for him or her.

Because of these reasons, Muslims strongly opposed the Adoption Bill of 1972 which sought to bring the Muslim Community too under the provisions of this law.

## IMPORTANCE OF MUSLIM PERSONAL LAW FOR MUSLIMS

It is the demand of Islam on its followers that they should follow all the ordinances and instructions of Almighty Allah and His Prophet without any reservations whatsoever. Whatever has been ordained should be followed and whatever has been prohibited should be desisted from. The family laws also come into this category. The Holy Quran declares those people successful who obey the ordinances and instructions of Allah and His Prophet.

*"The answer of the Believers, when summoned to Allah and His Messenger, in order that he may judge between them, is no other than this: They say: "We hear and we obey." It is such as these that will attain felicity."* (24:51)

It has also been ordained in the Quran that if any dispute arises between the Believers, it has to be decided in the light of the teachings of Allah and His Messenger; the Quran avers:

> *"If you differ in anything among yourselves, refer it to Allah and His Messenger, if you do believe in Allah and the Last Day."* (4:59)

If the Believers do not make the Quran and the Sunnah their judge in their disputes and try to decide them according to their whims and fancies or according to the laws framed by human beings, their Faith becomes questionable. Those who make a claim of Faith, but instead of solving their mutual differences and disputes in the light of the laws framed by Allah and His Messenger, refer their disputes to others and accept their decisions and judgements have been condemned by the Quran in the strongest terms and their actions have been declared to be rebellious.[1] Therefore, it is incumbent on Muslims that they should find solutions to all their mutual family disputes according to the Muslim Personal Law and should not refer them to other laws.

## SERIOUS NATURE OF THE CHALLENGE AND OUR RESPONSIBILITY

The prevalent situation in the country is very serious and dangerous for the Muslim Community. On the one hand, the judiciary is passing judgements which are against the Islamic Law (Shariat) and on the other hand, demands are made on the Central Government to formulate Common Civil Code and the Government is also showing its inclination to do so. The communal forces too are exerting pressure for the abrogation of the Muslim Personal Law by fabricating stories of oppression of the Muslim women. Groups of so-called progressive elements

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[1] The Quran, Chapter 5, Verses 44, 45, 47.

of the Muslim Community have also been raised who demand amendment and reformation in the Muslim Personal Law, new interpretation of the Islamic law of marriage, divorce and inheritance according to the "new situation," although these laws are not the result of human speculation and deliberation, but are based on the Divine Revelation as contained in the Quran and the Sunnah which cannot be altered or deleted.

In this dangerous situation, we should struggle hard to defeat the plots and intrigues of the opponents and enemies of Islam, so that we can follow and obey the ordinances and instructions of Islam in every sphere of our lives, particularly those teachings which are embodied in the Muslim Personal Law. To achieve this objective, we have to do three things:

First of all, we should strive hard to reform ourselves and our society according to the teachings of the Quran and the Sunnah. It is a fact that a greater part of the Muslim Society is unaware of the fundamental and societal teachings of Islam. The members of the family – husband, wife, children, and parents – do not even know the rights and obligations that have been ordained by Islam on each other and thus are unable to fulfil them which create differences and hatred among them. It is essential that we should try to get acquainted with the teachings of Islam and willingly follow them and fulfil the rights of each other. This can be achieved on the individual level and also through the establishment of Family Counselling Centres which can guide them properly.

Secondly, we should take a firm decision that whenever family disputes arise between us, we will not take the matters to the courts but take them to the Shariat Courts or Shariat Panchayats, and accept willingly and cheerfully the judgement and decisions pronounced therein according to the teachings of Allah and His Prophet (pbuh). It should be the responsibility of the Muslim

leadership to establish Shariat Courts or Panchayats in every nook and corner of the country.

Thirdly, we should approach our non-Muslim brethren and apprise them of the importance and efficacy of the Muslim Personal Law so that their misconceptions about it can be cleared.